

THE FRESH START

A Periodic Newsletter from the United States Trustee Offices for Region 11-Wisconsin and the Northern District of Illinois

WINTER 2001

TABLE OF CONTENTS

<i>From The Desk Of The U.S. Trustee.</i>	1
<i>News from the Chicago Office.</i>	2
<i>News from the Madison Office.</i>	3
<i>News from the Milwaukee Office.</i>	3
<i>Recent Region 11 Prosecutions.</i>	3
<i>Recent Court Decisions.</i>	4
<i>Debtor Identification Pilot Program.</i>	5
<i>Computer Transfers.</i>	6
<i>Pro Bono Volunteers Needed.</i>	6

FROM THE DESK OF THE U.S. TRUSTEE

As I write this it appears that a bankruptcy reform bill will be enacted by April if not sooner. The provisions of the new bill will bring myriad changes to the way that bankruptcy cases are administered. As currently written some of the more significant changes which affect this office include:

- i. A provision which would make credit counseling an eligibility requirement for an individual debtor and require each United States Trustee to determine which nonprofit budget and credit counseling agencies are on the approved list;

- ii. A provision which would require U.S. Trustee offices to do a means testing analysis of all chapter 7 cases;
- iii. A requirement that the United States Trustee issue a schedule of reasonable expenses of administering chapter 13 plans and;
- iv. A requirement that chapter 7 and 13 consumer debtors complete personal financial management courses before they receive a discharge with each United States Trustee having to determine which courses will be on the approved list.

Change is certainly in the air. I want to assure you that if and when the reform bill is passed, we will be ready to implement its provisions at the end of the 180 day transition period currently anticipated. As I write this, working groups consisting of USTP employees from around the country are busily studying the legislation and developing proposals to implement our new responsibilities under it. Those proposals will be fully reviewed and finalized well before the effective date of the legislation. The offices and employees of Region 11 will be fully conversant in the nuances of the new legislation and ready to work closely with the bench and bar to ensure that the transition is as seamless as possible.

There is a famous saying "may you live in interesting times". The next year will certainly qualify as such. As your United States Trustee I will do everything possible to have our offices ready with information and answers as we move into the new era of bankruptcy reform together.

News from the Chicago Office

On September 14, 2000, training for Region 11 Chapter 13 trustees and their administrators was held in Chicago. Chip Wilkes, Senior Bankruptcy Analyst, working with all the Chapter 13 trustees in Region 11, coordinated the seminar. Agenda topics included a short synopsis of the trusteeship, criminal referrals, banking and bonding issues, and how to manage business cases. An open forum answered questions on audits, filing motions to dismiss, objections to confirmation and working with Chapter 7 trustees.

During December 2000, Kevyn D. Orr, then Director of the United States Trustee Program, visited the Chicago office.

On December 6, 2000, Julia Russell, secretary to United States Trustee Ira Bodenstein, was awarded the Director's Award for Office Support. Julia was honored with this award, after being nominated by Ira Bodenstein, for providing incomparable assistance to the United States Trustee, and Assistant United States Trustees and for handling these duties with a cheerful and positive attitude. We join with former Program Director Kevyn D. Orr in congratulating Julia for her "noteworthy performance, positive attitude, and commitment to the Program." The Chicago office would be lost without her.

On February 1, 2001, Region 11 paralegals and analysts met to discuss issues involving trustee oversight including Form 4, legal and computer issues. Fortunately, the weather allowed staff from Madison and Milwaukee to join the Chicago staff.

On March 1, 2001, the annual Chapter 7 trustee seminar was held at the East Bank Club near the Loop. In a departure from past seminars, the seminar was held during a weekday. Agenda topics included trustee avoidance actions, judgment liens, and U.C.C. Article 9 amendments and its effect on bankruptcy administration. The Honorable Susan Pierson Sonderby, Chief Judge for the United States Bankruptcy Court, Northern District of Illinois, addressed the group on the state of the Bankruptcy Court. In addition, a judges' panel discussed standards for trustee liability, mediation, Chapter 7 trustees operating businesses and debtor education. Ira Bodenstein emphasized the need for adequate computer security to protect data.

On March 20, 2001, the United States Trustee Office is sponsoring Fundamentals of Bankruptcy and Bankruptcy-Related Crimes. This training is geared towards the federal law enforcement community. The large number of participants - 130 - represents various Inspector General Offices, the FBI, the Internal Revenue Service/Criminal Investigation Service, the United States Attorney's Office, the United States Postal Inspection Service and other local agencies.

Chapter 13 Trustee Tom Vaughn will be moving his office effective April 2001. The new address will be:

200 South Michigan Avenue
Suite 1300
Chicago, Illinois 60603-6398
Phone (312) 294-5900
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Chicago Assistant United States Trustee Sandra Rasnak, who also serves as the United States Trustees' National Fraud Coordinator, was named Vice Chair of the American Bar Association's Subcommittee on Bankruptcy Crimes, Fraud and Abuses of Bankruptcy Process, and Chair of the American Bankruptcy Institute's (ABI) Bankruptcy Fraud Subcommittee. The ABI is the nation's largest association of bankruptcy professionals, with more than 5,000 members.

We sadly report the passing away of two trustees from the Chicago area. Nathan Yorke, a longtime Chapter 7 trustee, and Elaine Jensen, a recently appointed Chapter 13 trustee. Both will be greatly missed.

Assistant United States Trustee Dean Harvalis will be the Acting Chapter 13 trustee supervising operations in Elaine Jensen's office during this interim period.

News from the Madison Office

On October 8, 2000, Maureen Gaber, Paralegal Specialist, gave birth to a 7 pound, 10 ounce boy. Region 11 extends best wishes to baby Wyatt and his family.

Also during October, training was held for the Chapter 7 trustee panel in the Madison office. Ira Bodenstein attended the meeting.

On January 26, 2001, Sheree Dandurand, Assistant United States Trustee, made a presentation to the Bankruptcy Section of the Winnebago County Bar Association on employment and fee issues including preparation of employment and fee applications, retainers, and conflicts. The seminar was attended by both experienced and inexperienced bankruptcy counsel.

On February 20, 2001, Amy Pemberton joined the Madison office as a Legal Clerk. Amy had previously been working at the U.S. Probation Office in Milwaukee. Amy is a welcome, and much needed, addition to the staff.

News from the Milwaukee Office

On November 2, Ira Bodenstein presented an Update from the U.S. Trustee at the 2000 Annual Bankruptcy Update sponsored by the State Bar of Wisconsin, held in Milwaukee. The seminar provided comprehensive case law update and substantive presentations from bankruptcy judges, bankruptcy practitioners and trustees. The same presentation was held in Madison the next day.

Recent Court Decisions

On January 16, 2001, the Supreme Court denied the writ of certiorari in Maier McInay & Kerkman, Ltd. v. Ira Bodenstein, 121 S.Ct. 856. This request for certiorari was based on the July 13, 2000 decision of the United State Court of Appeals for the 7th Circuit in the case of In the Matter of: Milwaukee Engraving Company, Incorporated, Debtor, Appeal of: Ira Bodenstein, United States Trustee, 219 F.3d 635. The issue was whether a professional may be compensated for services under Section 503(b)(1)(A) notwithstanding denial of its retention under Section 327. Following denial of Milwaukee Engraving Company's application for employment of the law firm Maier McInay & Kerkman, Ltd.,(MMK), on grounds that MMK was not disinterested, MMK sought payment for professional services rendered between commencement of the case and approval of it replacement. MMK's motion was granted, with the United States District Court for the Eastern District of Wisconsin affirming. On appeal by the

United States Trustee, the United States Court of Appeals for the 7th Circuit held that MMK could not receive compensation from the estate when its application for employment had been denied.

Recent Region 11 Prosecutions

On October 29, 2000, Helina Kontaxis pleaded guilty in the Northern District of Illinois to hiding her ownership of fur coats, jewelry and a Rolls-Royce automobile after she filed for personal bankruptcy in 1995. Kontaxis admitted to claiming less than \$3,000 in assets in the bankruptcy while concealing five fur coats, two diamond rings, a diamond bracelet, a pair of diamond earrings, her cosmetics business and the 1981 Rolls-Royce owned by her upscale women's clothing store. Kontaxis is known as "Contessa Helena" due to a title she said was inherited from her grandfather, a Greek count.

On November 23, 2000, in the Northern District of Illinois, businessman Leonard Chavin, was convicted by a federal jury of crafting a phony business deal to reduce his income taxes. Chavin was convicted on 8 of 12 tax fraud counts. Chavin's attorney, Martin Litwin, was convicted on four bankruptcy fraud charges for helping Chavin in his scheme. Chavin, a Chicago real estate investor who garnered extensive publicity nearly a decade ago for waging stockholder fights, was a former furniture retailer who promoted himself as "King of Maxwell Street" because his store had been located there. Chavin was charged with arranging a sham sale of a retail clothing store he controlled and then fraudulently claimed a \$900,000 bad debt loss to reduce his taxes for five years. Litwin and his cousin, Michael S. Glickman, were charged in connection with the bogus sale and attempts to cover it up. Litwin allegedly recruited Glickman as the phony buyer of the Chavin-owned Howard's Style Shop. Litwin was accused of giving Glickman \$10,000 for the purchase. Chavin lent the business \$900,00, and in light of the bogus sale, falsely claimed the loan as a bad debt loss on income tax returns for 1992 through 1996, substantially reducing his tax liability. Litwin coached Glickman to lie in a Bankruptcy Court proceeding about the source of the \$10,000, and why he bought the store. As part of his plea agreement, Glickman was a witness for the prosecution. The Bankruptcy Court found pervasive fraud by Chavin in trying to hide assets. In rejecting his appeal of that decision, the 7th Circuit U.S. Court of Appeals took the highly unusual step of referring the matter to the U.S. Attorney's Office for investigation.

On February 28, 2001, in the Eastern District of Wisconsin, Cora Cameron was sentenced by U.S. Magistrate Judge Patricia J. Gorence to two years of probation for continuing to prepare bankruptcy petitions for debtors despite two court orders not to engage in the practice. Cameron made more than \$8,000 from her bankruptcy business, according to Joseph Wall, Assistant United States Attorney. Cameron's "customers" signed bankruptcy court documents, under oath, falsely stating they had no paid assistance in petition and schedule preparation. Cameron allegedly directed her customers to lie on the petitions and during the creditors'

meeting. Cameron denied telling her customers to lie, saying they lied to her. In 1992 U.S. Bankruptcy Judge Russell Eisenberg permanently prohibited Cameron from preparing bankruptcy petitions and schedules for filing in court. A similar order was later issued by U.S. Bankruptcy Judge Margaret McGarity. Law enforcement agents found a copy of Eisenberg's order in Cameron's Milwaukee home during a search last year. The McGarity order was not found in Cameron's home, nor any proof she received it. Assistant United States Trustee John Byrnes said that preparing someone else's return by itself is not against the law, but practicing law without a license is. When someone prepares bankruptcies like Cameron did, "exactly how you can do that without giving legal advice, I don't know," Byrnes said.

Debtor Identification Pilot Program

Debtors filing a personal bankruptcy case after January 1, 2001 must show proof of identification and Social Security number (SSN) under a pilot program now in effect in 19 federal judicial districts. The aim of the Debtor Identification Pilot Program, launched January 1, 2001, is to detect and deter identity fraud in bankruptcy, typically involving filing for bankruptcy using a false name and/or SSN. Under the pilot program, debtors filing under Chapters 7 or 13 must provide proof of identity and SSN at the 341 meeting. Permissible forms of identification include a valid state driver's license, government-issued picture identification card, U.S. passport, or legal resident alien card. Proof of SSN may be provided through a driver's license, Social Security card, current W-2 form, or payroll check stub. During the pilot program, the U.S. Trustees will collect data on such topics as use of questionable identity documents, inaccurate names, inaccurate SSNs resulting from mistakes such as typographical errors, and inaccurate SSNs resulting from apparent fraud. The pilot program is modeled after procedures instituted here since September 29, 1999 by Ira Bodenstein. As a result, attorneys representing bankruptcy debtors in Region 11 now routinely ask clients for proof of identification and SSN, and advise clients to provide proof of identification and SSN at the 341 meeting. Cases of apparent criminal fraud were uncovered as well as typographical errors resulting in wrong SSNs on bankruptcy documents.

A common reason for filing a bankruptcy case using a false name or SSN is to delay foreclosure or eviction using the protection of the automatic stay, without placing a bankruptcy on one's own record. A false filer with a prior bankruptcy may be currently ineligible to refile. A false filer who seeks only the temporary protection of the stay often fails to appear at the 341 meeting, and the case is dismissed. But the bankruptcy filing remains in the court record under the victim's name, and on the victim's credit record. Another reason to file for bankruptcy under a false name or SSN is to evade payment of, and to discharge, debts incurred under the false name or SSN. The filer may have fraudulently obtained credit cards, telephone service, bank loans, or other valuable goods or services. In other cases, the use of a false name or SSN on a bankruptcy petition results from careless error. An attorney, paralegal, or bankruptcy petition preparer may accidentally transpose digits in the SSN while filling out the client's bankruptcy

papers. If the inaccurate SSN matches the true SSN of another person, the bankruptcy filing may appear on that person's credit record.

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